

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

HC. REV. NO. 157 OF 2018

(CORAM: R. E. ABURILI - J.)

PETER OKELO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

**(Being an Appeal seeking Sentence Revision against judgment delivered in Criminal Case No. 960 of 2018 at Siaya Law Courts,
PM's Court.)**

RULING ON REVISION OF SENTENCE

1. On 1st October 2018, this court ordered for an affidavit to be sworn and filed by the Investigating Officer to clarify on the issue of the number of satchets of alcoholic drinks with which the applicant Peter Okello was charged and convicted on his own plea of guilty on an undisclosed date.

2. However, on 26/9/2018 the Prosecutor applied saying he had inadvertently produced 57 satchets which were meant for accused in File No. 962/2018 instead of 2 satchets and the court, Hon. Ongondo in Siaya PM Cr. Case No. 960 of 2018 ordered that:

“in that case the file is hereby forwarded to the Deputy Registrar to be placed before the Hon. Judge urgently for revision.”

3. It was on the basis of the above that on 1/10/2018, I ordered for an affidavit of the Investigating Officer to clarify the issue but it would appear the order was never served upon the Investigating Officer and the same has been returned to me unattended, while the applicant is languishing in prison on an unclear Plea of Guilty.

4. I have considered the plea taken on undated day and the subsequent order of 26/9/2018 and I am persuaded that the plea was not unequivocal on the face of it as the prosecution tended to cure the defect later.

5. The facts upon which the applicant was convicted are possession and selling of 152 satchets of alcoholic drinks yet the subsequent application by the Prosecutor shows that the satchets were only 2 and not 152.

6. Accordingly, I find the conviction and sentence of a fine of Kshs. 30,000/= in default 6 months was unwarranted and unsafe.

7. The conviction and sentence are hereby set aside and vacated. The convict **Peter Okello** is hereby ordered to be set free unless otherwise lawfully held.

Dated, Signed and Delivered at SIAYA this 21st Day of November 2018.

R.E. ABURILI

JUDGE